

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

CARRIE HALL,

Plaintiff,

v.

DOUGLAS COLE, *et al.*,

Defendants.

Case No. C10-5155RJB/JRC

REPORT AND RECOMMENDATION

NOTED August 6, 2010

This 42 U.S.C. §1983 Civil Rights action has been referred to the undersigned Magistrate Judge pursuant to Title 28 U.S.C. §636(b)(1)(A) and (B) and Local Magistrate Judges' Rules MJR 1, MJR 3, and MJR 4.

This matter comes before the court upon plaintiff's request/motion to voluntarily dismiss the complaint (Dkt. # 23). After reviewing plaintiff's motion, the pleadings made in support thereof, and the remaining record, the court recommends the motion be GRANTED and this action be DISMISSED WITHOUT PREJUDICE.

**DISCUSSION**

A plaintiff has the right to voluntarily dismiss a case when no answer or motion for summary judgment has been filed by an adverse party. Fed R. Civ. P. 41 specifically provides

1 that dismissal as a matter of right can be foreclosed only by the filing of an answer or a motion  
2 for summary judgment. Roddy v. Dendy, 141 F.R.D. 261, 262 (S.D. Mississippi, 1992).

3 Accordingly, the court recommends the action be DISMISSED WITHOUT PREJUDICE.

4 **CONCLUSION**

5 Plaintiff's request to voluntarily dismiss her complaint-- (Dkt. # 23) -- should be  
6 **GRANTED.**

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8 Pursuant to 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b), the parties shall have  
9 fourteen (14) days from service of this Report to file written objections. See also Fed. R. Civ. P.  
10 6. Failure to file objections will result in a waiver of those objections for purposes of appeal.  
11 Thomas v. Arn, 474 U.S. 140 (1985). Accommodating the time limit imposed by Rule 72(b), the  
12 clerk is directed to set the matter for consideration on August 6, 2010, as noted in the caption.

13 Dated this 8<sup>th</sup> day of July, 2010.

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17 J. Richard Creatura  
18 United States Magistrate Judge  
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